

REMARKS/ARGUMENTS

Reconsideration of the above-identified application respectfully requested. Applicant appreciates the allowance of Claims 11 and 12. Claims 2, 3, 5 and 8 have been canceled. New Claim 21 has been added. Claims 1, 4, 6-7, 9-10, and 13-20 have been amended.

The present invention is to a container for discarded smoking materials. As previously noted discarded smoking materials may be burning or smoldering when discarded or may be malodorous. The container of the present invention claims the features of a unique closure and the use of an air eliminator to remove trapped air between the bag and the container wall. The ability to remove the trapped air enables the bag to become “increasingly flame and puncture resistant.” *See, Specification, page 7, lines 14-17.*

Claims Rejections – 35 U.S.C. § 102

Claims 13-14 stand rejected under 35 U.S.C. §102(b) as being anticipated by either Krein (U.S. Patent No. 5,059,084) or LaFleur (U.S. Patent No. 5,794,670).

The patent to Krein, as reflected by the title, is to a vacuum apparatus for installing a water proof liner. The patent to LaFleur is to a collapsible liner for use within a bulk container. Neither, patent can anticipate Claims 13-14 as presently amended.

Claim 13, as amended, requires that the container have a closure mechanism located between the upper portion of the container and the lower portion of the container to separate the upper portion from the lower portion. Neither Krein nor LaFleur teach such a mechanism. It is therefore respectfully requested that this rejection be withdrawn and Claims 13-14 be allowed.

Claims Rejections – 35 U.S.C. § 103

Claims 1, 3-10, 15-20 stand rejected under 35 USC 103(a) as being unpatentable over Garland (U.S. Patent No. 5,765,339) in view of LaFleur (U.S. Patent No. 5,794,670).

Garland is directed to a diaper pail for receiving and storing soiled items. The Garland diaper pail has a liner for receiving the soiled items. The soiled items are placed

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through an opening in the top of the pail. The Examiner correctly notes that Garland does not teach using an air eliminator. It is respectfully submitted that there is no conceivable reason why someone designing or developing a container for discarded smoking materials would look to the **diaper pail** art for inspiration.

To complete the rejection the Examiner cites LeFleur. As noted above LeFleur is to a collapsible liner for use within a bulk container. Neither Garland nor Lefleur have any suggestion whatsoever for combining the teachings of these two non-analogous references to design a container for discarded smoking materials. Even if they were properly combinable, which they are not, the limits of the claimed invention have not been met. For example, neither reference discloses a closure mechanism located in said central portion for separating said upper portion from said lower portion and having an opening therein through which a bag may be inserted as required by the claims.

It is therefore, respectfully submitted that Claim 1, the claims dependent therefrom, and Claims 15-21 are not obvious in view of Garland taken with LeFleur. It is respectfully requested that the claims now be allowed.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that this Response to Office Action mailed July 25, 2006, and Post Card are being deposited with the United States Postal Service, with sufficient postage attached thereto, in an envelope addressed to: MAIL STOP AMENDMENT, COMMISSIONER FOR PATENTS, P.O. BOX 1450, Alexandria, VA 22313-1450, on this 25th day of October, 2006.



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